

A4R
8.L33
v.2/27
Copy 3



South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

Vol. 2

December, 1985
(Interim Issue Number 5)

No. 27

CONTENTS

S. C. STATE LIBRARY
MAR 27 1986
STATE DOCUMENTS

LEGISLATIVE UPDATE

Lotteries: Still in the News.....1-2

State Legislators—Changing, Adapting or Evolving?.....1-5

RESEARCH REPORT

The Session Ahead: Brief Preview of 1986.....2-1

AROUND THE HOUSE

New Staff.....3-1

OFFICE OF RESEARCH

Room 324, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803) 758-5096

Legislative Update

Lotteries: Still in the News

Lotteries: More and More States Have Them

At last count, 22 states have lotteries either in operation or approved for action. Eight states—including South Carolina—have lottery legislation to consider. According to estimates quoted in *From the State Capitals*, state lotteries are "now recognized as a mega-revenue raiser—expected to top the \$10 billion mark in 1985."

States in the northern section of the country—including those in the so-called "rust belt"—enacted lottery legislation fairly early, to supplement a declining tax base. Among these states are Illinois, Michigan, Ohio, and Pennsylvania. A majority of the Middle Atlantic states and all of New England have joined the lottery movement. Out west, the entire Pacific Coast has authorized lottery operations.

Those states with lottery legislation to consider: Minnesota, Wisconsin, Nebraska, Oklahoma, Louisiana, Alabama, Florida—and, South Carolina.

Lottery Revenues: Mega-Bucks

Supporters of lottery legislation often point to the "mega-revenue raising" capacity of the games. They cite such figures as these:

Iowa's new lottery started in August of this year. One store sold 2,000 tickets the first hour of operations; in Larchwood, a town of 700, ticket sales reached 3,000; across the state, 3,100 outlets are selling the tickets.

Legislative Update, December, 1985

New York's lottery games have totaled more than \$4.2 billion in sales since they started in 1976. By law, 45% of the New York sales must go to education, so \$1.9 billion has been channeled into the New York school system from the games. According to recent reports, lottery sales this summer have pumped about \$40.5 million into the education system, reducing a projected \$75 million shortfall.

In New England a multi-state game began September 2, with Vermont, New Hampshire and Maine lotteries joining together. According to the industry paper *Gaming & Wagering Business*, the game has racked up impressive sales of \$993,000 to date. Business in New Hampshire has doubled—going from \$217,000 a week to over \$530,000 a week in ticket sales. In Vermont, lottery sales have gone from \$12,000 a week to \$12,000 a day.

On The Other Hand: Uncertain Revenues and Moral Issues

There are those, however, who are not dazzled by such figures. Two objections are often raised against lotteries, one from a practical financial aspect; the second from a moral point of view.

The first objection is that lottery revenues are not solid enough for states to count on. Initial sales are generally high, but they slip relatively quickly. States then are faced with either a decline in revenues, or the need to increase sales through advertising and other active methods.

At the recent National Conference of State Legislatures meeting in Seattle, Rep. Vera Katz (D-Oregon) dismissed lotteries, calling them "a lousy means of funding state government." She went on to say that lotteries could be beneficial—if the funds were used for economic development which would "truly create jobs and spur economic expansion."

The need to market state lotteries to keep sales high leads, inevitably, to a moral issue: should the state be involved not only in profiting from gambling, but encouraging it? "Marketing" and "advertising," of these games are means to induce people to spend money on gambling chances.

An interview in the October issue of *Gaming & Wagering Business* highlights this dilemma. Dr. Joan Zielinski, new director of the New Jersey State Lottery addressed the issue of "marketing" her state's lottery.

Dr. Zielinski is a former marketing professor at the Wharton School of Business at the University of Pennsylvania. To increase sales, she points out, you can do one of two things: have your present customers buy more tickets, or encourage new customers. She prefers the first tactic. Her main thrust is to have more "occasional or infrequent" players buy tickets more often.

"Why aren't they jumping in on a regular basis to buy a lotto ticket?" Dr. Zielinski wants to know. "Is it that it simply doesn't come into their minds? Who knows? But that type of player is obviously interested in playing sometimes. If we can do some research, find what their motivations are, what could make them become more regular players--that's the way that I would prefer to grow the market."

There's Gambling, And Then There's GAMBLING

Some might find it improper for the state to undertake this kind of marketing. Dr. Zielinski, however, sees gambling as a spectrum reaching from light or mild gambling--church raffles, for example--to serious gambling, such as casino blackjack. As she puts it:

"You want to look at the various characteristics that differentiate the lottery from, let's say a casino. With the lottery, buying a lottery ticket is an incidental activity. You walk into a convenience store, you buy a loaf of bread, you buy a carton of milk and you buy a lottery ticket. In a casino, you go there expressly for the purpose of playing craps or playing blackjack, so the social milieu of the event is very different."

Note: for point of reference: last year the New Jersey Lottery had total sales of \$848 million. Of this, \$425 million was distributed in prizes, and \$359 million was contributed to state institutions and education. This was the largest amount in the 14-year history of the state's game. (Information provided by officials of the New Jersey State Lottery.)

To Bet or Not To Bet

Lotteries continue to be a subject of controversy and debate, even in those states which have adopted them. The prospect of increased revenues on one hand is countered by the uncertainty of income on the other. The ethical and moral aspects of the problem further serve to complicate the issue. Now that the lottery question has been raised in South Carolina, the odds are it won't go away soon.

State Legislators—Changing, Adapting or Evolving?

The Times They Are A'Changing

There seems to be much discussion but little doubt about it: the character of American legislatures and legislators is changing. No doubt much of this change is caused by the increasing complexities of modern life. Serious students of our legislatures try to follow this change in order to direct it into positive channels.

In the August issue of *Legislative Update* we presented a Research Report on the Citizen's Council for State Legislatures, and their recommendations in the late 1960's for legislative reform and renovation. South Carolina ranked relatively high in implementing the specific suggestions suggested by the Council.

Other observers, however, have taken a more general, but just as interesting look at our state lawmakers and their institutions.

Requiem for a Vanishing Breed?

The latest to comment on the fluid nature of our nation's legislatures is Alan Rosenthal, Director of the Eagleton Institute of Politics at Rutgers--The State University of New Jersey. His article, "The Changing Character of State Legislators--Or: Requiem for a Vanishing Breed," appears in the latest issue of *Public Affairs Review*. *

According to Rosenthal, two key factors are behind the changes in our legislatures: first, an increasing number of members regard themselves as full-time, professional legislators, and act accordingly; 2) there has been an increase in professional staff assistance for legislators. The key note, obviously, is a movement towards a professional legislature.

* *Public Affairs Review* is the official journal of the Public Affairs Council, a non-profit, non-partisan professional organization of corporate public affairs executives founded in 1954 at the suggestion of President Dwight D. Eisenhower.

Citizens and Professionals

Rosenthal divides the "legislator species" into two breed: the "citizen legislator" and the "professional." He says that the "amount of time spent on the job of a legislator is what chiefly distinguishes the citizen from the professional." Obviously, any good legislator will spend a great deal of time on his duties, so Rosenthal must refine his definition a little:

Generally speaking, the "citizen" is someone who has another occupation or substantial interests outside the legislature. He (or she, as the case may be) is not dependent on politics for his livelihood or even equanimity, and wants to put as much time as possible into other pursuits. The "professional" is usually someone who has no other significant occupation and little time or interest for anything other than politics.

Rosenthal says that "significant proportions" of members in state legislatures consider their occupations as "legislator": over half in the 177-member Illinois House, for example; two-fifths of the 60-member New York Senate; and one-quarter of the 132 members of the Ohio Legislature. (In South Carolina, five Representatives and one Senator are listed as "Legislator" in the *Manual*.)

Even when they are not officially professional, many are *de facto* full-time: an estimated half of the legislators in Missouri; about half in Arizona and Iowa; and one-quarter in Florida and Maryland, according to Rosenthal.

Nationally, the fifty legislatures are split: "at present about one-third ... are mainly in the hands of full-timers, another third are still in the hands of part-timers, and the remaining third are in relatively equal balance."

A New Breed? Or Just More Responsibilities?

Rosenthal's article maintains that there is a "new breed" of legislator arising in the land: professional legislators, earning both their money and personal rewards from government service. They are advancement oriented, aiming towards higher offices during their careers.

He notes that there are fewer legislators today who have time-consuming occupations outside the State House—fewer lawyers, physicians, dentists, accountants. Educators, on the other hand, have increased, partly because of their flexible schedules, and partly because teachers are used to relatively low-paying salaries, such as legislators receive.

On the other hand, all members of the state legislators appear to be spending more time at work--either in session or out. Rosenthal cites the example of Florida state senators, who spent an average of 200 days on legislative work, only 60 days in regular session. Almost half of their time--96 days--was spent in their district office and on constituent work.

Growth of Legislative Staff

A hallmark of the professional legislature, according to Rosenthal, is that it has "a larger staff than citizen legislatures. As much as anything else, its professional staff is what distinguishes the professional legislature."

He cites the example of Wisconsin, where between 1969 and 1983 clerical staff grew by 33%, while professional staff increased by nearly 300%. This growth was mainly "attributable to senators and representatives hiring their own aides." Rosenthal maintains that "the largest increases in staffing nationwide have come about because individual members have been authorized to have their own professional staffs."

Readers of *Legislative Update* will recall, however, that the Citizens' Council on the Legislatures recommended increasing staff to provide legislatures with information and independence in dealing with issues.

Public Service: The Bottem Line

Of course, there must be a reason for all of this growth and all of this increase in "professionalism." The answer is easy to spot: legislators have more and more duties, more and more work. To quote Rosenthal:

The problems with which legislators deal are complex, and legislatures have taken on leadership roles in trying to solve them. The public expects legislatures to cope with problems and to be responsive, and constituents are not reluctant to make demands on their representatives.

Given the complex nature of our modern world, it is hardly surprising that more members have found themselves spending more time at their legislative duties, and needing increased staff to help them. Indeed, this could be seen as a positive sign: because of the financial and oversight duties of a legislature, it needs as much assistance and information as possible.

Conclusion

Rosenthal sees a definite shift towards the "professional legislature" and the "professional legislator." Perhaps the times require legislators who are "professionals," rather than "citizen legislators." It seems likely that the differences between "professional" and "citizen" are less important than their common bonds. As Rosenthal puts it:

...the motivations of the new breed of professional legislator are not that dissimilar from those of the old breed of citizen legislator. Most members of both groups are moved by power and prestige, a sense of obligation or mission, a yearning to help people, and a belief that they can make government work better.

If this is the case, then perhaps our state legislators are not merely changing—they are adapting to new situations. As legislatures continue to meet the demands and challenges of the 1980's, we can say that not only have they evolved—they are still evolving.

No American public official has a uniform, but all receive salaries.

This too, and even more naturally, is the result of democratic principles. A democracy could surround its magistrates with pomp, covering them in silk and gold, without making any direct attack on the principle of its existence. Such privileges are ephemeral, going with the place rather than with the man. But to establish unpaid official positions is to create a class of rich and independent functionaries, and to shape the core of an aristocracy. Even if the people still retain the right of choice, the exercise of that right comes to have inevitable limitations.

When a democratic republic converts salaried appointments into unpaid ones, I think one may conclude that it is steering toward monarchy. And when a monarchy begins paying its unsalaried officials, that is a sure sign that it is working either toward a despotism or toward a republican conditions.

I therefore think that the change from salaried to unpaid appointments by itself constitutes a real revolution.

I regard the complete absence of unpaid duties as one of the clearest indications of democracy's absolute sway in America. The public pays for all services of whatever sort performed in its interest; hence any man has the chance as well as the right to perform them.

Alexis de Tocqueville, Democracy in America

The Session Ahead: Brief Preview of 1986

Summary

The 1986 session of the South Carolina General Assembly is just a little over a month away. Already legislators have been busy with committee hearings, pre-filing of bills and other preliminary activities. Representatives returning to Columbia in January will find their attention claimed by the general appropriation bill, a number of major items still working through the legislative process, and the inescapable knowledge that 1986 is, after all, another election year.

General Appropriation Bill

Once gain, this will be the major action to be considered by the General Assembly, and the House has already started the process moving forward. Attention has already focused on revenue forecasts (which have been revised several times so far) and agency requests. A less publicized but perhaps more important feature, however, is the flexibility—or lack of it—the General Assembly has in writing the Appropriation Bill.

On the one hand, state spending has been limited through various actions—homestead exemptions, income tax indexation, constitutional spending limitations, a 95 percent limit on spending General Fund revenues, etc. At the same time, state revenue has also been reduced by several actions, such as the phase-out of the inventory tax, phasing-in of income tax indexation, the \$300 sales tax cap on motor vehicles, boats and airplanes, and so forth.

On the other hand, the state has entered into a number of long-term funding commitments which are automatic—these include the formula-funded programs, such as those for the Education Finance Act, the Education Improvement Act, and programs for higher and technical education, as well as Aid to Subdivisions. Also, cost-of-living increases for state employees are figured on a formula basis. Finally, state agencies use their past year's budget as a base for the next year's budget; this leads to steady increases.

The combination of these two courses has meant that the Legislature has less and less discretion over how and where state funds will be spent. Once money has been allocated to the mandatory, formula-funded programs, little is left to distribute. Major new efforts, such as the Education Improvement Act, require new sources of income—that is, tax increases. The tax base for general operations is reduced by such special allocations.

How Big of A Budget?

Estimates of revenue and expenditure vary greatly before, during and sometimes after the Legislature fashions the General Appropriation Bill. Earlier this fall the Budget and Control Board adopted what was called an "austere" spending plan of \$2.76 billion for fiscal 1987. Generally speaking, "austere" seemed to mean maintaining programs and services at current levels, rather than expanding them.

Most state agencies came in with lists of new employees they needed to hire and services they had to upgrade; most were disappointed. The Department of Corrections, still working to implement the Nelson v. Leeke settlement, did better than most.

Gasoline Tax Increase?

Related to revenue is the question of increasing the gasoline tax to pay for road improvements and highway maintenance. Last session the Senate Finance Committee raised the tax by two cents, but the increase was killed on the Senate floor. Licensing fees were raised instead—but on a "temporary" basis.

Highway officials claim the funds are desperately needed, and have gone on record with figures such as the following:

--The state's urban areas need \$370 million to improve existing roads and build new ones;

--Across the state, 417 miles of highway need work that will cost around \$533 million;

--There are 978 bridges in the state that need to be improved or replaced at a price tag of \$334; add to this the old Cooper River Bridge, built during the 1930s.

Will these needs translate into a gasoline tax increase? If so, how much will it be: one cent, two cents? A one cent increase would generate an extra \$19 million in revenue, say some experts.

Of course, increasing taxes is hardly the most popular move during an election year. Some observers point to the depressed economies in parts of the state—especially textile areas—and argue that a tax increase at this time would be unfair to impose and difficult to pay. Some legislators have already wondered if the Highway Department makes the best use of its current funds. A key point to watch: whether the world oil glut drives gasoline prices down; lower prices at the pump could make a higher tax more passable.

According to the Highway Users Federation, the U.S. average gasoline tax is 12.2 cents. The highest tax is levied in Washington state, which collects 18 cents on the gallon; the lowest is in Missouri, which is 7 cents per gallon.

According to the Federation, the highest-taxing states for gasoline are: 14 cents: Indiana, Maine, New Hampshire, Utah; 14.5 cents, Idaho, Nebraska; 15 cents: Connecticut, Michigan, Montana; 15.35 cents: West Virginia; 15.5 cents: District of Columbia; 16 cents: Louisiana; 16.5 cents: Wisconsin; 17 cents: Minnesota; 18 cents: Washington.

Lowest on the list were the following: 7 cents: Missouri; 7.5 cents: Georgia; 8 cents: Alaska, New York, Wyoming, New Jersey; 8.5 cents: Hawaii; 9 cents: California, Mississippi, Oklahoma, Oregon; 9.7 cents: Florida.

The State Can Do No Wrong--In Some Cases

Last year the State Supreme Court ruled against the centuries-old tradition of sovereign immunity--the doctrine that the "state could do no wrong" and was therefore immune from lawsuits from citizens. The Court allowed the doctrine to run until July 1, 1986, thus giving the General Assembly time to fashion legislation to protect government bodies.

The House responded with the Tort Claims Act (H.2266) to limit government liability for torts. Governments could not be sued for most conduct of their basic duties, such as carrying out laws, assessing and enforcing tax laws, regulatory inspections and decisions made by elected officials and judges.

Persons could still file claims or initiate civil actions in a number of instances, however, but would have to do so within two years after the loss was (or should have been) discovered. Any action not brought within the two year period is forever barred. Governments would be represented by an appointee of the Attorney General's Office, and they could purchase insurance against claims. Finally, individual claims would be limited to \$250,000, and the total amount recovered from a single occurrence could not be greater than \$500,000, no matter how many agencies or political subdivisions were involved.

Crime and Law Enforcement

No other topic has such an immediate and profound impact on persons as crime--especially violent crime. Citizens in South Carolina will continue to demand the Legislature take action against crime; the problem is, what sort of action?

The Omnibus Crime Bill (S.459) is supposed to strengthen penalties against persons convicted of violent crimes, while easing the overall burden on the correctional system. Short-term and non-violent prisoners would spend their time in local facilities; the state would help defray the costs of housing these inmates. Provisions for victim restitution are included in the bill. This has passed the Senate and is in the House Judiciary Committee.

The Sentencing Guidelines (H.2625, H.2626) measure also aims at providing more uniformity in the criminal justice system. The guidelines were developed over a number of years by a panel of jurists, legal scholars and law enforcement officials. The guidelines would set fair, uniform standards for sentencing convicted criminals. The basic impact of the guidelines would be to reduce the overall inmate population, but increase the number of violent and long-term offenders in prison. Under the guidelines, fewer persons would go to prison, but they would go to prison longer.

The guidelines have met with criticism. Some say they are too soft on criminals. Others object that judges' lose their discretion and the benefit of their experience. Finally, some observers say the guidelines are do not allow enough flexibility. The measure was not acted upon in last year's session, and could be an issue in 1986.

Stone Walls Do Not A Prison Make...

(You Also Need Fences and Guard Towers and Plenty of Bed Space)

The topic of prisons and correctional facilities seems likely to haunt the state for some time. The state has agreed to a settlement in the Nelson v. Leeke lawsuit, which means more prisons, more guards and other staff, and more expenses.

There is one ironic twist to this issue: in the past, people didn't want prisons built in their counties. Now they do, because of the jobs that will be provided.

Stiffer treatment of criminals will likely be proposed again in 1986. In 1985, measures were introduced to deny parole to persons who had a death sentence commuted by the Governor; to improve the parole hearing process; to deny parole to persons convicted of three violent offenses; and to deny bail to persons charged with capital crimes, or who represent a threat to the community.

Child protection will probably receive considerable interest in 1986. A measure requiring a background check on child day care employees (H.2494) was on the House calendar at adjournment. Other bills providing for increased protection of children, and stiffer penalties for those harming them, could be expected.

Revision of the Probate Code

At present the law governing the transfer of property is spread throughout several sections of the S.C. Code. The proposed revision would bring the law together and iron out inconsistencies and conflicts. It would also deal with the property of living persons, and make provisions for guardians--both for minors and incapacitated persons of all ages.

Article II would govern distribution of estates for persons who die without a will. At present a surviving spouse can inherit as little as one-third of an estate, while children can claim as much as two-thirds. In some cases, a person might have to support an entire household on only one-third of the estate.

The revised could would provide that a surviving spouse claims at least one-half of the estate; a second provision would allow the survivor to inherit the entire estate "in the absence of issue of the marriage." A person could make different provisions in a will.

Article III is designed to make the probate and administration of estates more efficient and equitable; Article VI deals with multiple party bank accounts; Article V protects disabled persons and their property.

Children and Youth, Drugs and Alcohol

Alcohol and drug abuse are two major problems facing the youth of South Carolina, according to the Governor's Children Coordinating Cabinet. According to some figures, about 55,000 teenagers in South Carolina can be classified as "problem users" of alcohol and other drugs; that represents 13% of the total population between ages 10 and 19. The 1986 session might well see legislation introduced to deal with some of the issues involved with this shocking statistic.

False identification cards are one method by which underage youths obtain alcohol. Legislation has been introduced in past sessions to ban false ID cards and make it illegal to tamper with real ones. According to knowledgeable observers, fake ID cards are a tremendous problem.

There is also likely to be legislation introduced to require beer and liquor stores to display signs stating: "Warning: Drinking Alcoholic Beverages During Pregnancy May Cause Birth Defects."

Finally, additional emphasis could be placed on educational programs and intervention projects to keep youths off drugs and alcohol.

Medical Malpractice: See You in Court?

"Malpractice" is generally defined as any professional misconduct or unreasonable lack of skill. In medicine, the term has a more specific meaning: "...it means bad, wrong, or injudicious treatment of a patient, professionally and in respect to the particular disease or injury, resulting in injury, unnecessary suffering, or death to the patient..." [Black's Law Dictionary].

Malpractice cases are decided in the court room, and in recent years juries have awarded large sums to plaintiffs in such cases. Trial lawyers say such awards are justified under the circumstances—is \$100,000 really too much for a person paralyzed because of a doctor's negligence? Can you really put a price on the value of a loved one's life?

Doctors, on the other hand, say that the awards are not only unfair in many cases—they drive up malpractice insurance rates, which could drive many doctors out of the profession. According to figures presented at a recent meeting of the South Carolina Medical Association, malpractice premiums rose by 30% between 1978 and 1984, and could rise by an additional 30 during the next year alone.

One possible solution has been proposed by the SC Medical Association: set limits on the amount of awards that can be given in such cases. As outlined in the November SCMA meeting, these limits would be:

Limit damage awards to \$100,000 for non-economic damages such as emotional pain and loss of consortium (companionship)

Restrict the amount lawyers could collect in damages by creating a sliding scale—50% for the first \$50,000 awarded; 35% of the next \$50,000; \$25 percent of the next \$100,000; and \$15% of awards over \$200,000. Currently attorneys can collect up to 50% on all damages, and hand in extra bills for certain expenses.

Eliminate punitive damages except where there is clear evidence that the injury was done with malice.

Change the provisions relating to infants, so that three years are allowed for discovery of the injury, and an additional three years are allowed for legal action. At present the limit is to the age of 19.

Require the establishment of liability before damages are assessed.

Because of the legal and emotional issues involved, the debate over medical malpractice and limiting awards could become not only involved, but disturbing. Both lawyers and physicians at the SCMA meeting urged all involved to avoid name-calling, and concentrate instead on the difficult but important task of solving a complex problem.

Death With Dignity

Last session the House passed a measure that would allow an adult patient suffering from a terminal condition to instruct his or her physician to withhold or withdraw life-sustaining procedures. The procedures referred to are those extraordinary ones which merely prolong the dying process, and which cannot lead to recovery by the patient.

In order to safeguard the patient's life, the "living will" would have to be executed in the presence of three witnesses, and one of them must be an ombudsman designed by the State Commission on Aging. The signing must be voluntary, and cannot be a condition for getting either insurance or medical care. Finally, the patient could revoke the "living will" at any time.

Conclusion

Clearly, 1987 will be a session in which the General Assembly must make some difficult decisions. The possible gap between revenue and requests, and the increasingly complex state budget will consume most of the attention of the Ways and Means Committee and staff even before January arrives, and the whole House confronts the mammoth task of fashioning an Appropriation Bill.

Some issues, such as crime or death with dignity, stir passions and arouse debate; they are likely to attract widespread media attention. Other, more technical matters such as the probate code revision are no less important, and will occupy many hours of consideration.

Finally, with November 1986 only eleven short months away from the second Tuesday in January, a good deal of attention will be on the various political contests already warming up across the State. It should be an interesting year.

Around the House

New Staff for Committee on Aging

Sherri Craft has joined the staff of the Joint Legislative Committee on Aging as Administrative Assistant.